

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH LAWRENCE ACCARDI,
KEVIN JAMES JAY,
and DIANE MARIE MIESBAUER

Appeal No. 2006-0411
Application No. 09/224,262

ON BRIEF

Before KRASS, RUGGIERO, and SAADAT, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-28, which are all of the claims pending in the present application.

The claimed invention relates to a system and method of providing remote service to medical diagnostic systems which includes a field service unit connected to an automated service facility. The field service unit is configured to compose service requests based upon a menu of predefined service modules or functions. The service request, which includes identification of a

diagnostic system or facility, is communicated to the automated service facility which verifies the request and executes the requested function.

Claim 1 is illustrative of the invention and reads as follows:

1. A system for providing field service to medical diagnostic equipment, the system comprising:

a medical diagnostic station configured to store medical image data;

a field service unit configured to generate service requests for operational servicing of the medical diagnostic station identifying a standard service function from a plurality of service functions and a unique identifier for the medical diagnostic station; and

a service facility configured to be coupled to the medical diagnostic station and to the field service unit via network links, the service facility including a service request management device for receiving the service requests from the field service unit, accessing data stored at the medical diagnostic station as defined by the standard service function, and transmitting data to the field service unit in response to the service request.

The Examiner relies on the following prior art:

Derzay et al. (Derzay)	6,434,572	Aug. 13, 2002
		(filed Nov. 25, 1998)

Claims 1-28, all of the appealed claims, stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Derzay.¹

¹ Although the Examiner, in the final Office action, had made a provisional obviousness-type double patenting rejection of claims 1-28, no mention of this rejection is made in the Examiner's Answer. We conclude, therefore, that this rejection has been withdrawn. See Ex parte Emm, 118 USPQ 180, 181 (Bd. Pat. App. & Int. 1958).

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Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs² and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, and the evidence of anticipation relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the Derzay reference does not fully meet the invention as set forth in claims 1-28. Accordingly, we reverse.

At the outset, we note that anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of

² The Appeal Brief was filed December 4, 2003. In response to the Examiner's Answer mailed February 24, 2004, a Reply Brief was filed April 30, 2004, which was acknowledged and entered by the Examiner as indicated in the communication dated May 13, 2004.

performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to the appealed independent claims 1, 8, 16, and 23, the Examiner attempts to read the various limitations on the disclosure of Derzay. In particular, the Examiner (Answer, pages 4 and 6-9) points to the illustrations in Derzay's Figures 1 and 6-11, as well as the description at various portions of columns 1, 6, 7, and 13-15 of Derzay.

Appellants' arguments in response assert a failure of Derzay to disclose every limitation in independent claims 1, 8, 16, and 23 as is required to support a rejection based on anticipation. Appellants' assertions (Brief, pages 6-9; Reply Brief, pages 2-5) focus on the contention that, in contrast to the claimed invention, Derzay does not provide a disclosure of the identification and execution of a standard or predefined service function associated with a service request.

After reviewing the Derzay reference in light of the arguments of record, we are in general agreement with Appellants' position as

expressed in the Briefs. As asserted by Appellants, we find no support for the Examiner's conclusion that the problem area selection 206 illustrated at Figure 8 of Derzay corresponds to the claimed standard or predefined service request. Similarly, we agree with Appellants (Reply Brief, page 3) that Derzay's transmitting, receiving, and processing functions, identified by the Examiner (Answer, page 7) as "operational standard service functions," merely involve the conveying of problem area information, not the identification of a standard or predefined service function as claimed.

Further, we also find ourselves in agreement with Appellants (Brief, page 8; Reply Brief, pages 4 and 5) that, the Examiner's assertions to the contrary notwithstanding, the report page 218 illustrated in Derzay's Figure 9 simply informs users of system information such as service history, and does not involve the claimed standard predefined service request. We find a similar deficiency in the Examiner's reference to Derzay's Figure 11 protocol screen 236 which, in contrast to the Examiners' asserted correspondence to a standard or predefined service function, merely provides instructions for manipulating and processing medical diagnostic data.

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In view of the above discussion, since all of the claim limitations are not present in the disclosure of Derzay, we do not sustain the Examiner's 35 U.S.C. § 102(e) rejection of independent claims 1, 8, 16, and 23, nor of claims 2-7, 9-15, 17-22, and 24-28 dependent thereon. Therefore, the decision of the Examiner rejecting claims 1-28 is reversed.

REVERSED_

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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MAHSHID D. SAADAT)	
Administrative Patent Judge)	

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